

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of \$3,977.03 for date of service 02/15/01?
b. The request was received on 02/08/02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. TWCC 60
 - b. HCFA(s)
 - c. EOB/TWCC 62 forms/Medical Audit summary
 - d. EOBs from other carriers
 - e. Medical Records
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. TWCC 60 and Response to a Request for Dispute Resolution dated 04/19/02
 - b. HCFA(s)
 - c. Medical Audit summary/EOB/TWCC 62 form
 - d. Medical Records
 - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 04/10/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 04/12/02. The response from the insurance carrier was received in the Division on 04/23/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor:
 - a. The Requestor did not submit a letter for Requesting Dispute Resolution.
2. Respondent:
 - a. "Provider is an ambulatory surgical center (ASC). Carrier reduced a charge for ambulatory surgery on DOS 2/15/01, CPT Code 29826, from \$6,213.03 to a fair and reasonable rate of \$2,236.00, paying twice the normal surgical per diem rate. The rate of reimbursement for ASCs is not governed by a fee guideline. The reimbursement methodology is neither specified in the *Acute Care Inpatient Fee Guideline* for hospitals nor for is it specified in the *Medical Fee Guideline*. Accordingly, services are to be reimbursed at a fair and reasonable rate."

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 02/15/01.
2. The provider billed \$6,213.03 for the date of service 02/15/01.
3. The carrier reimbursed the provider \$2,236.00 for the date of service 02/15/01.
4. The amount in dispute is \$3,977.03 for the date of service 02/15/01.
5. The denial on the EOB is M-"NO MAR SET BY TWCC-REDUCED TO FAIR AND REASONABLE PAID AT 2X SURGICAL PER DIEM."

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgical center. Commission Rule 134.401 (a) (4) states ASC(s) "...shall be reimbursed at a fair and reasonable rate..."

Texas Labor Code Section 413.011 (d) states, "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

The Medical Fee Guidelines General Instructions (VI) discuss that if a MAR value has not been established for a CPT code, reimbursement shall be, "...at the fair and reasonable rate."

The provider submitted additional reimbursement data (EOBs from various carriers) in an attempt to demonstrate payments of fair and reasonable documentation for treatment of an injured individual of an equivalent standard of living in their geographical area. In light of recent SOAH decisions, showing what other carriers have paid an ASC is not evidence of effective medical cost control and is not evidence of amounts paid on behalf of managed care patients of ASC's or on behalf of other non-workers' compensation patients with an equivalent standard of living. The provider's documentation failed to meet the criteria of 413.011 (d).

Because there is no current fee guideline for ASC(s), the health care provider has the burden to prove that the fees paid by the carrier were not fair and reasonable. The provider submitted EOB(s) from other carriers, but the provider failed to meet the criteria of 413.011 (d). Therefore, no reimbursement is recommended.

The above Findings and Decision are hereby issued this 31st day of May 2002.

Michael Bucklin, LVN
Medical Dispute Resolution Officer
Medical Review Division

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